IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Rev. No.701 of 1992
Date of Decision:- 25.04.2007

Sham Lal ....Petitioner(s)

through
Mr.Rajiv Trikha, Advocate

vs.

State of Haryana ....Respondent(s)

through
Mr.R.D.Sharma, DAG, Haryana.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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1) Whether Reporters of the local papers may be allowed to see the judgment?
2) To be referred to the Reporters or not?
3) Whether the judgment should be reported in the Digest?

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SURYA KANT, J.

This criminal revision is directed against the order dated 7.7.1990 passed by the learned Sub Divisional Judicial Magistrate, Jagadhari whereby the petitioner was convicted under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act (in short 'the Act') and was sentenced to undergo rigorous imprisonment for a period of six months with a fine of Rs.1,000/- as well as against the judgment dated 17.10.1992 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhari, dismissing the petitioner's appeal against the above-stated order of conviction and sentence passed by the learned Sub Divisional Judicial Magistrate.

As per the prosecution case, on 22.8.1978 at about 2.15 P.M.,

the petitioner was intercepted by the Food Inspector in the presence of Dr.S.M.Gupta and Rahim Din and was found in possession of 10 Kg. of cow milk in a drum for public sale. The Food Inspector disclosed his identity, served the notice Ex.PA and purchased 660 ml. of the said cow milk on payment of Rs.1.30 ps. through receipt Ex.PB and thereafter divided the same into three equal parts and prepared the samples.

On analysis vide report Ex.PD, it was found that the sample did not conform to the standard cow milk being 27.5.% deficient of the milk fat.

The petitioner was accordingly prosecuted. The Food Inspector as well as both the aforesaid witnesses appeared and supported the prosecution case. All the relevant documents including the analysis report were also produced on record. After recording the statement under Section 313 Cr.P.C. in which the petitioner pleaded that he was falsely implicated, opportunity to lead the defence evidence was granted.

Both the Courts below, on appreciation of the documentary as well as oral evidence on record, have concurrently held that the cow milk which the petitioner was carrying for public sale was having 27.5% deficient of milk fat, therefore, the petitioner was guilty of committing an offence under Section 7 read with Section 16(1)(a)(i) of the Act. The petitioner was accordingly sentenced, as stated above.

I have heard learned counsel for the petitioner at length and perused the impugned orders. The evidence led by the prosecution has also been gone into. Despite his best efforts, learned counsel for the petitioner has not been able to make out either a case of misreading of record or any perverse finding. His entire effort is for re-appraisal of the evidence and to arrive at a finding contrary to the finding of fact recorded by the Courts

below. This, in my view, is beyond the scope of revisional jurisdiction of this Court.

Consequently, no case to interfere with the conviction of the petitioner is made out.

Faced with the situation, learned counsel for the petitioner has highlighted more than one mitigating circumstance to contend that the period of sentence awarded to the petitioner deserves to be reduced.

It is argued that except the case in question, no other such like case has ever been registered against the petitioner thereafter. The age and family circumstances of the petitioner have also been highlighted. It is further pointed out that the petitioner was released on bail way back on 22.10.1992 and the said concession was never misused by him.

Learned State counsel does not seriously dispute the above-noticed mitigating circumstance. Consequently and having regard to the fact that the petitioner has not misused the concession of bail and is not reported to be involved in any other such like case, this revision petition is partly allowed to the extent that the period of six months' sentence awarded to the petitioner is reduced to the extent of the actual sentence already undergone by him. However, the amount of fine of Rs.1,000/- is increased to Rs.5,000/-. The petitioner is directed to deposit the enhanced amount of fine within a period of three months from today, failing which he will be called upon to undergo the sentence as awarded by the Courts below.

April 25, 2007 **(SURYA KANT)**
poonam **JUDGE**